



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 28, 1997

Ms. Kimberly L. Kiplin  
Acting Executive Director  
Texas Lottery Commission  
P.O. Box 16630  
Austin, Texas 78761-6630

OR97-0450

Dear Ms. Kiplin:

You ask whether certain information is subject to required public disclosure under the Open Records Act, (the "act") chapter 552 of the Government Code. Your request was assigned ID# 104385.

The Texas Lottery Commission (the "commission") received a request for "a copy of the personal financial disclosure statements filed with the Commission by GTECH executives Victor Markowicz and Guy Snowden." GTECH claims that the requested personal financial disclosure statements contain private financial information that is protected from required public disclosure based on Government Code section 552.101. You state:

The Commission has made a reasonable search for any responsive documents. The Commission does not have any responsive documents in its files. It is believed that any documents that would be required to complete a background check, are on file with the Texas Department of Public Safety. The Commission is unable to state whether any "personal financial disclosure statements" of Mssrs Markowicz and Snowden, would be part of any Texas Department of Public Safety file. . . . this request is being submitted in the event the documents are found within the "possession" of the Texas Lottery Commission because they may be in the possession of the Texas Department of Safety."

Although you state that the commission possesses no responsive documents, you seem to suggest that because the requested information could possibly be information the Texas Department of Public Safety ("DPS") would provide the commission as part of a background check of Mr. Markowicz and Mr. Snowden, the commission may be in constructive possession of the information for purposes of the act.


Government Code section 466.201 "entitles" the commission to obtain criminal history record information from the DPS to assist it in the investigation of certain individuals. The question is whether this entitlement means the commission must obtain information from DPS in order to comply with this request. For purposes of discussion, we will assume that the DPS criminal history record information includes the requested information.

Information subject to the act includes information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body or for a governmental body and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002. Generally, the act does not require a governmental body to obtain information not in its possession from another entity or to obtain new information in order to comply with an open records request. *See* Open Records Decision Nos. 561 (1990), 558 (1990). A governmental body's duty to obtain requested information from another entity only arises if that entity holds the information on behalf of that governmental body. *See* Open Records Decision No. 534 (1989).

We do not believe DPS maintains criminal history record information "for" the commission. Nor do we believe that the fact that a statute entitles the commission to obtain the criminal history record information means that such information is held "for" the commission. Thus, even though the commission may have a right to obtain criminal history information from DPS, that right does not mean that the commission constructively possesses such information. Consequently, the act does not require the commission to obtain criminal history record information concerning the GTECH executives.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kay Guajardo", with a long horizontal flourish extending to the right.

Kay Guajardo  
Assistant Attorney General  
Open Records Division

KHG/rho

Ref.: ID# 104385

cc: Ms. Kathy Walt  
Houston Chronicle  
1005 Congress Avenue, Suite 770  
Austin, Texas 79701